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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

R.C.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE  
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

F059393

(Super. Ct. No. JJV063865A)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte A. Wittig, Commissioner.

R.C., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Jason G. Chu, Deputy County Counsel, for Real Party in Interest.

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\*Before Wiseman, Acting P.J., Gomes, J., and Kane, J.

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Petitioner in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's order issued at an uncontested six-month review hearing terminating her reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her son I. We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

Dependency proceedings were initiated in April 2009 after petitioner was arrested for battery against a police officer, resisting arrest and child endangerment. Just prior to her arrest, petitioner was pushing then 17-month-old I. in a stroller in a shopping center parking lot when a plain clothes detective stopped her because she resembled an individual he wanted to question. The detective identified himself to petitioner, explained why he stopped her and asked to see her identification. Petitioner refused to identify herself and the situation escalated to the point the detective had to call for backup. Two police officers arrived and attempted to elicit petitioner's cooperation, but she resisted them as well and became physical with them. All the while, she had I. in her arms. I. was safely removed from petitioner and petitioner was placed in the patrol car.

During the ride to the police station, petitioner expressed delusional and paranoid thinking. She stated the military put bugs and video cameras in her house and the police and FBI had been following her ever since she arrived in Tulare. She identified Eddie as I.'s father and said she had two other children who were in her mother's custody. Later, at the police station, petitioner told the detective she was schizophrenic but not taking medication.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Petitioner's mother (grandmother) stated petitioner's two older children were placed in her (grandmother's) custody at birth under legal guardianship because of petitioner's schizophrenia. Grandmother said petitioner stopped all medical treatment for her mental illness, including medication, two years prior.

Eddie said he and petitioner lived together for over two years and claimed petitioner stopped taking her medication on the advice of her doctor. Eddie was aware of petitioner's mental health problems and admitted she argued with him and threw things at him, but Eddie said he was not concerned about it.

The Tulare County Health and Human Services Agency (agency) took I. into protective custody and placed him in foster care. The agency also filed an original dependency petition on his behalf pursuant to section 300, subdivision (b) (failure to protect), alleging petitioner's untreated mental illness and domestic violence toward Eddie and Eddie's substance abuse and failure to protect I. from petitioner placed I. at a substantial risk of harm.

At the detention hearing, the juvenile court appointed counsel and ordered I. detained pursuant to the petition. The court also ordered petitioner to undergo a competency evaluation and set the pretrial hearing for May 2009.

The psychologist who evaluated petitioner's competency opined petitioner was not able to understand or participate in the dependency proceedings because of her paranoia. Rather, the psychologist believed the legal proceedings would only exacerbate petitioner's mental status and condition. The psychologist reported that, during the interview, petitioner exhibited acute signs and symptoms of psychiatric disturbance including excitability, agitation, marked paranoia and social withdrawal. She expressed her belief I. was being wrongly withheld from her and became louder and more unreasonable as questions focused on legal concepts and the process. Ultimately, the psychologist was unable to calm petitioner and continue the evaluation without risking

that petitioner would become more agitated. However, based on the interview, the psychologist did not believe petitioner was competent to participate in the proceedings and believed she would benefit from psychotropic medication.

At the pre-trial hearing, the juvenile court appointed a guardian ad litem for petitioner and set a contested jurisdictional hearing for June 2009. Petitioner subsequently waived her right to a contested hearing and the juvenile court exercised its dependency jurisdiction pursuant to section 300, subdivision (b). The court also set the dispositional hearing for July 2009.

At the dispositional hearing, the juvenile court ordered reunification services for petitioner and Eddie. Petitioner's services consisted of parenting, mental health treatment and random drug testing. In addition, the court gave the social worker discretion to modify the case plan to include substance abuse treatment if needed. The court set the six-month review hearing for December 2009.

In October 2009, the agency asked the court to set a hearing to consider suspending petitioner's visits. The agency also filed a report setting forth its reasons. Earlier in the month, the social worker asked petitioner why she missed a drug test. Petitioner stated she was no longer going to drug test, participate in mental health treatment or attend parenting classes. She said she wanted I. returned to her that day and did not want him in the "program" anymore. She said she was not taking and did not need her medication. She said her medication was poison and made her feel "weird." The social worker asked petitioner when she last used methamphetamine. Petitioner stated it was two days previously but refused to drug test. Petitioner said smoking methamphetamine helped her focus and communicate and she believed she could get a prescription for it from the military. She also said she and I. were participating in stem cell research at the time of his detention and the police and government were spying on

her. The social worker suggested to petitioner that she take her medication and immediately go to the mental health office to speak to her therapist. Petitioner refused.

In late October 2009, the juvenile court conducted a hearing on the agency's request to suspend petitioner's visits. The court explained to petitioner it was important that she drug test and that the court wanted her to continue visiting I. but needed her cooperation. Petitioner stated she did not believe her attorney was on her side. The court assured petitioner that her attorney was on her side and ordered visits to continue unless petitioner acted inappropriately during the visits because of drug use or some other reason.

In its report for the six-month review hearing, the agency recommended the court terminate Eddie's reunification services but continue petitioner's services until the 12-month review hearing. The agency reported petitioner discontinued taking one of her psychotropic medications and was not consistently attending her medication management appointments. However, she was scheduled to meet with the psychiatrist and was drug testing. She was also attending therapy and parenting classes. In addition, she regularly visited I. who was affectionate and loving with her. The agency also reported the maternal grandparents and the foster parents were interested in adopting I. if petitioner failed to reunify.

In December 2009, the juvenile court convened the six-month review hearing and, at Eddie's request, set the matter for a contested hearing in January 2010. Later that afternoon, petitioner contacted the social worker demanding that she remove I. from his foster placement. Petitioner said she heard voices and had weird feelings about the foster home. She explained the voices told her the foster mother was giving I. methamphetamine and was doing things to the other children in the home, like molesting them. She also said the foster mother communicated with her through the voices. She

threatened to sue the agency for child abduction and hung up the telephone when the social worker told her the agency's mission was to protect the child's best interests.

In late December 2009, the agency filed an addendum to its six-month report, recommending the juvenile court terminate petitioner's reunification services and set a section 366.26 hearing with a goal of adoption. The agency reported petitioner was not taking her medication or attending her medication management appointments and therapy sessions. In addition, she had not completed the parenting class and was not drug testing.

In January 2010, the juvenile court conducted the six-month review hearing. Neither petitioner nor Eddie appeared for the hearing. County counsel and I.'s attorney asked the court to terminate reunification services. Petitioner and Eddie's attorneys presented no argument. The juvenile court found it would be detrimental to return I. to petitioner's custody and petitioner was provided reasonable services but failed to regularly participate and make substantive progress in her court-ordered services. Consequently, the court terminated petitioner's reunification services and set a section 366.26 hearing. This petition ensued.<sup>2</sup>

## **DISCUSSION**

Petitioner contends, as she did throughout the dependency proceedings, that she has been treated unfairly. She claims she was discriminated against because of her mental condition and no one worked "all that hard" in her favor. She asserts that she almost finished her program and wants I. returned to her custody or continuation of reunification services.

A lower court's judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Consequently, an "appellant must affirmatively

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<sup>2</sup> Eddie did not file a writ petition.

demonstrate error by an adequate record.” (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) In this case, petitioner fails to show how the juvenile court erred.

At each review hearing, including the six-month review hearing, there is a statutory presumption that the child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child’s safety, protection or well-being. (§§ 366.21, subds. (e) & (f); 366.22, subd. (a).) In assessing the risk of detriment, the court considers the extent to which the parent participated and made progress in the court-ordered treatment plan. (*Ibid.*) However, ultimately, the court’s decision hinges on whether the parent’s progress eliminated the conditions leading to the child’s placement out of the home. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.)

On review, we examine the juvenile court’s finding of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) On the facts of this case, as summarized above, we conclude substantial evidence supports the juvenile court’s finding.

I. was removed from petitioner’s custody because petitioner has a serious mental illness, which she was not treating. As a result, petitioner was sufficiently paranoid and delusional such that a simple attempt by police officers to question her in April 2009 escalated into a physical altercation with I. in the middle. By the six-month review hearing eight months later, petitioner was still not taking her prescribed psychotropic medication and she was still paranoid and delusional as evidenced by her telephone conversation with the social worker in December 2009. Consequently, she had not eliminated the problem that necessitated I.’s removal and the juvenile court could not safely return I. to her custody at the six-month review hearing.

Further, the juvenile court properly terminated petitioner’s reunification services and set the section 366.26 hearing. Where, as here, the child was under the age of three

years at the time of the initial removal, the juvenile court may terminate reunification services at the six-month review hearing and set a section 366.26 hearing if the court finds by clear and convincing evidence that the parent failed to regularly participate and make substantive progress in a court-ordered treatment plan. (§ 366.21, subd. (e).) If, however, the court finds the parent was not provided reasonable services or that there is a substantial probability the child could be returned to parental custody within six months, the court must continue services to the 12-month review hearing. (*Ibid.*) In order to find a substantial probability of return, the court must find the parent made significant progress in resolving the problem prompting the child's removal and demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection and well-being. (§ 366.21, subd. (g)(1).)

In this case, the juvenile court found petitioner was provided reasonable reunification services and substantial evidence supports that finding. Petitioner received both medication management and individual therapy to help stabilize her mental condition, but she refused to take advantage of those services. Consequently, she remained mentally unstable. Further, by refusing to participate in treatment, petitioner demonstrated she had neither the capacity nor the ability, at least at that time, to provide for I.'s safety, protection and well-being. Accordingly, substantial evidence also supports the juvenile court's finding there was not a substantial probability I. could be returned to petitioner's custody after another six months of services.

On the facts of this case, we affirm the juvenile court's decisions not to return I. to petitioner's custody and to terminate her reunification services and set a section 366.26 hearing to implement a permanent plan. We therefore deny the petition.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.